

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:22-cr-00356
)
Government,) FORT WORTH, TEXAS
)
VS.) MARCH 24, 2023
)
DANIEL LOYOLA, JR.,)
)
Defendant.) 9:48 A.M.

VOLUME 1 of 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

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P R O C E E D I N G S

MARCH 24, 2023

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THE COURT: We now turn to Case No. 4:22-cr-356.

Counsel for the government is here.

Counsel for the defendant is here.

All right. Sir, would you state your name for the record, please.

THE DEFENDANT: Daniel Loyola, Jr.

THE COURT: Okay. Thank you. We are here to consider the sentencing in your case.

Counsel, did you and your client receive a copy of the presentence investigation report and the addendum?

MR. RHODES: Yes, your Honor.

THE COURT: And have you reviewed those documents with your client?

MR. RHODES: Yes, your Honor.

THE COURT: Did the government receive these?

MR. THOMAS: Yes, your Honor.

THE COURT: All right. So your first objection has been accepted by the addendum. So I will accept that as well.

And that leaves, if I understand correctly, the trafficking enhancement objection.

MR. RHODES: Yes, your Honor, that's correct.

1 THE COURT: And I will give you a chance to
2 address that. Let me ask you though, as it relates to
3 Application Note 13(A)(i), do the facts support that
4 element?

5 MR. RHODES: When you say, "that element"?

6 THE COURT: 13(A)(i). Right. I'm not asking you
7 to concede 13(A)2(i).

8 MR. RHODES: Oh, I'm sorry. I heard 13(A)(5)
9 apologize, your Honor.

10 THE COURT: (A)(i).

11 MR. RHODES: Your Honor, I do believe the facts
12 here would show. Well, I believe that if it is not shown
13 that this Adrian individual was not working under the guise
14 of a federal agency or a state agency, then I believe
15 that -- let me backtrack, your Honor.

16 Under (A)(i), I believe Mr. Loyola has transferred
17 two or more firearms. Yes.

18 THE COURT: Okay. So (A)(i) so we can set that
19 aside. So then the question and your objection -- well, of
20 course, it's multi-faceted -- but part of it is, is it
21 consistent with the actual 2K2 language? And if it's
22 inconsistent then it should not apply, and we should rely on
23 the language.

24 And then another part includes, regardless, does
25 the evidence support a conclusion that 13(A)(ii)(I) or (II),

1 may not be supported by the facts, is that --

2 MR. RHODES: I believe, yes, your Honor. I think
3 that what my argument boils down to is the way that the
4 addendum and -- the way that probation and the government
5 are interpreting the Application Note, I believe creates a
6 needless conflict between the plain language of 2K2.1(b)(5),
7 it creates a needless conflict with 2k2.1(b)(5).

8 Instead, they should be read in harmony to say
9 there are two guns -- at least two guns that Mr. Loyola
10 needed to know or have reason to believe would end up -- you
11 know, with someone whose position would be unlawful, or with
12 someone who Mr. Loyola knew or had reason to believe
13 intended to use or dispose of the firearm unlawfully.

14 I believe that the way that the addendum
15 interprets the Application Note currently, they are holding
16 him accountable based solely on the fact that this machine
17 gun may fit with (A)2(ii) or (ii), as your Honor said.

18 I think there has to be at least one other gun in
19 order for this enhancement to apply. And that's based on
20 the plain language of B(5) that says "firearms" plural.

21 It would make no sense to apply a trafficking
22 enhancement to an individual where they only trafficked in
23 one firearm, when the plain language of the guideline says
24 "firearms," plural. And so, I think that's the first aspect
25 of the objection.

1 THE COURT: And on that aspect what do you make of
2 the fact that under 13(A)ii), the Application Note
3 designates on the disposal aspect of this, a firearm,
4 Article "A"?

5 MR. RHODES: Your Honor, I don't think that that
6 changed the argument at all. I think that the "and" in the
7 first (i) means that, even though 2(i) references "a
8 firearm," you still have to show this test in 2(i) for
9 multiple guns, multiple firearms.

10 And I believe that the case law supports that.
11 The Fifth Circuit, as I mention in my addendum objection,
12 the Fifth Circuit has said that multiple firearms are
13 required to trigger this enhancement.

14 And so, I believe while in the Application Note
15 the language may be poor, the fact that it reads "a firearm"
16 doesn't change the fact that multiple guns are required.

17 THE COURT: Okay. Thank you for that.

18 Do you agree that under 2(i), 13(A)2(i), where it
19 says, "a firearm," that that refers to a single firearm?

20 MR. RHODES: Your Honor, that specific language --

21 THE COURT: Yeah.

22 MR. RHODES: -- in (A)2(i) --

23 THE COURT: I understand there's more context. I
24 understand your contextual argument. I'm just trying to
25 drill down and then step back. So just drilling down to

1 this, and there's a canon or a caution against being
2 hypertextual, so I understand your argument.

3 I want to drill down to just that, those two
4 words, and then step back and look at the context to try to
5 understand better. So if we do that, if we drill down,
6 where it says, after the "and" of (i), when we move to (ii),
7 "and knew or had reason to believe that such conduct would
8 result in the transport, transfer, or disposal of 'a
9 firearm' to an individual."

10 When it says, "a firearm to an individual," the
11 language is referring to a single firearm; is that right?

12 MR. RHODES: With how your Honor is explaining --

13 THE COURT: Yeah.

14 MR. RHODES: -- where we're going in this specific
15 instance, yes, I believe --

16 THE COURT: Right.

17 MR. RHODES: -- that that language refers to "a
18 firearm" --

19 THE COURT: Because your argument --

20 MR. RHODES: -- because the Application Note says,
21 "a firearm."

22 THE COURT: Because your argument loops back to
23 (A) (i), which says two or more. So "a firearm" in your
24 argument, as I understand it, you've got to account for two
25 or more to fit here?

1 MR. RHODES: Right.

2 THE COURT: Right. Right. So "a firearm" does
3 refer to a single firearm in 2(i), but that's only half of
4 it to answer your question, because you got to account for
5 the two or more. And so, "a firearm" deals with firearm
6 one, "a firearm" deals with firearm two, and "a firearm"
7 deals with however many more.

8 MR. RHODES: And so on and so on. I think that
9 that is the correct interpretation of the Application Note.
10 And under that application of the Application Note 13, when
11 you read it that way, it fits with the plain language of
12 (B)(5), which is the goal of the Application Note, and
13 that's the goal of statutory interpretation.

14 There's no need to create a conflict here where
15 there isn't one. And interpreting it the way that the
16 addendum does and the way that the government is doing
17 creates that conflict and it's unnecessary.

18 And when an unnecessary conflict arises
19 language -- text should be read in such a way that they're
20 harmonious with each other. I believe that the way that
21 your Honor just interpreted Application Note 13 would render
22 them harmonious, because that would trigger multiple guns
23 being required to be proven under (A)2(i).

24 THE COURT: And so, let me ask, so now that I
25 understand it and we've wrestled with at least

1 hypertextually the language here. So let's step back a
2 moment now and let me ask you if this reading would be
3 harmonious with 2K2.1(b)(5).

4 And that is, the Application Note requires, for it
5 to be applied, that a defendant had been engaged with two or
6 more firearms, that is, multiple firearms. The defendant
7 transported, transferred, or disposed of two or more
8 firearms, and it meets that. So multiple firearms, plural.

9 And then, out of those multiple firearms, two or
10 more, the defendant at least disposed of one of those
11 firearms to an individual who it would be unlawful or knew
12 they would act unlawfully with it, whatever (I) and (II)
13 say, why would that not be harmonious?

14 That is, he's transporting, et cetera, disposing
15 multiple firearms, plural, and then out of those multiple
16 firearms, which we don't want him to do, he's getting rid of
17 at least one illegally.

18 MR. RHODES: Well, so, your Honor, I think that
19 your hypothetical matches my hypothetical that I put in my
20 addendum -- my objections to the addendum, where if you have
21 individual A, individual B, and individual C, and individual
22 A is transferring firearms, and he gives five guns to
23 individual B, and individual B can lawfully possess them,
24 he's not going to do anything with them that would be
25 illegal, and then he gives one firearm to individual C,

1 whose possession would be unlawful or he intended to do
2 something illegal with that, that would not trigger the
3 firearms trafficking enhancement.

4 I believe that's the exact hypothetical that your
5 Honor just presented. And so, and that wouldn't trigger
6 because he is distributing multiple firearms, yes, but all
7 of them are lawful, save one. And again, the plain language
8 of the guideline requires there to be multiple firearms
9 being trafficked.

10 And so, he's only given one gun illegally. It's
11 not enough. It doesn't get you there. To answer your
12 question, no, I do not think that the situation that you
13 have presented would trigger the enhancement.

14 THE COURT: Let me ask you this on that
15 hypothetical. What if the person disposed of those
16 firearms, A, B, and C, multiple firearms to A, multiple
17 firearms to B, multiple firearms to C, and B and C didn't
18 dispose of them illegally, and they're not unlawful
19 recipients, but A disposed of multiple firearms to people
20 legally, and one firearm to someone illegally?

21 MR. RHODES: I don't think that would trigger the
22 trafficking enhancement. If we are talking one gun --

23 THE COURT: But my question to you is, why would
24 this not be in harmony?

25 Because that's what we have here, arguably. We'll

1 get to the evidence in a minute. But arguably, we will get
2 to the evidence in just a minute.

3 Just, hypothetically, if a defendant had two or
4 more firearms, gave them to a person and transported,
5 disposed of them to the person, and then that person
6 disposed of one firearm illegally --

7 Well, let me ask it this way. Would you agree
8 that that fits the text of Application Note 13?

9 MR. RHODES: When you say, "fits the text," are
10 you saying does the situation, would we be looking at
11 Application Note 13 given that situation?

12 THE COURT: So a defendant gives multiple -- gives
13 two firearms to a third party. That third party disposes of
14 one of those firearms to a convicted felon, that that person
15 knows is a convicted felon, and keeps the other firearm.

16 Would Application Note 13, would it fit within the
17 terms of Application Note 13?

18 MR. RHODES: No, not necessarily, because under
19 your hypothetical, we know nothing about -- we are kind of
20 talking about multiple levels here, but going back to the
21 original disperser of the firearms --

22 THE COURT: Yeah.

23 MR. RHODES: -- we know nothing about what they
24 knew, about who they were giving the gun to or who that
25 person was then going to give that gun to and that's what is

1 required under the Application Note.

2 THE COURT: Very good. Let's add to that
3 hypothetical that the person who gave the firearms to the
4 third party knew that one of the firearms would be disposed
5 of by giving it to a felon. Would it fit the text here?

6 MR. RHODES: No. I don't think that it would,
7 because we're only talking about one gun. I think that you
8 still have to have multiple firearms in order for this
9 trafficking enhancement to apply.

10 And so, I don't know if you're ready to turn to
11 the evidence in this case yet, but I think under a proper
12 reading of the Application Note, you just have to have more
13 than what we have here.

14 THE COURT: Forget the evidence, but just on the
15 hypothetical though, let me ask it this way: If the facts
16 scenario were that a defendant in a case sold two firearms
17 to a third party, and the defendant in that case knew that
18 the third party was going to dispose of one firearm to a
19 convicted felon, it's clear, is it not, that the defendant
20 in that case transferred and disposed of two or more
21 firearms to another individual, right?

22 MR. RHODES: Yes. To that specific part of
23 your -- yes.

24 THE COURT: Right. And that "a firearm" that he
25 transported to that individual was transferred or disposed

1 of unlawfully.

2 MR. RHODES: Yes, I think the facts -- yes. Yeah.

3 THE COURT: Yeah.

4 MR. RHODES: But I don't think that triggers the
5 enhancement.

6 THE COURT: And it doesn't trigger the
7 enhancement, because your argument is, that either
8 contextually it's got to refer to both firearms in 13(A)(i),
9 or if it doesn't, then there's conflict between the
10 Application Note and the plain text of the guidelines such
11 that the Application Note shouldn't be followed?

12 MR. RHODES: Exactly. That is my exact argument.
13 Yes, your Honor.

14 THE COURT: Okay. So let's set that aside for a
15 minute then. And so, as I read the information in the
16 presentence report, the information in that report indicates
17 that this third party, in this instance, Adrian, worked for
18 a Mexican drug cartel.

19 And so, as it relates to the machine gun kind of
20 firearm or the other firearms here, is it not a reasonable
21 inference for me to draw that it is clear when you transfer
22 firearms, regardless of the type, to someone who works for a
23 Mexican drug cartel, that their possession is either
24 unlawful, or that they intend to dispose of the firearm
25 unlawfully, that is, they intend to transfer those firearms

1 to the Mexican drug cartel?

2 MR. RHODES: As it pertains to the machine gun,
3 it's possible that that could be a reasonable inference in
4 this case, because at the time Mr. Loyola was attempting to
5 purchase the machine gun, he knew that Adrian was somehow
6 connected with a cartel.

7 As it pertains to any other firearms that relate
8 to Adrian, no, I do not think so, because we have no
9 evidence in this case of when Mr. Loyola became aware that
10 Adrian was involved with a narcotics cartel.

11 We know nothing about this Adrian individual. We
12 don't know if he is a convicted felon. We don't know if he
13 is -- we know nothing about him.

14 And putting that aside, we know nothing about what
15 Mr. Loyola knew about Adrian at the time that he purchased
16 these other firearms. Either, you know, for Adrian or with
17 the intention of giving them to Adrian. We don't know what
18 he knew.

19 And that is the other part of the Application Note
20 that is required is Mr. Loyola must have known or had a
21 reason to believe. The evidence here doesn't get you to
22 that preponderance standard such that we can decide that
23 Mr. Loyola knew or had reason to believe that Adrian could
24 either not possess the firearms or was going to use them
25 unlawfully.

1 I think specifically regarding the Barrett .50
2 caliber rifle, you know, that is a firearm that can be
3 purchased legally. That is not a gun that is typically used
4 in drug transactions. A Barrett .50 caliber rifle has a
5 barrel that's, you know, huge. That's not something that
6 you take to a drug deal.

7 And so, I don't think that you can assume that
8 Mr. Loyola, regardless of what his knowledge was, had a
9 reasonable belief that Adrian would have used that in
10 furtherance of drug trafficking or anything.

11 We don't know what Mr. Loyola knew about Adrian at
12 the time he bought the Barrett .50 caliber rifle. We have
13 no idea if Mr. Loyola had any inclination that that gun was
14 possibly bound for Mexico or going to be used illegally or
15 anything.

16 The simple fact of this case as it pertains to
17 this enhancement is we just don't know. There's not enough
18 evidence here to trigger the enhancement because we don't
19 know, we just don't.

20 THE COURT: Very good. Have I allowed you to make
21 any argument you wanted to? Have I cut you off in any way?

22 MR. RHODES: No, I don't believe, your Honor. I
23 would simply add, it follows this, we-don't-know theme. So
24 we've spoken about Adrian, but there's also this other
25 aspect of Mr. Loyola where he appeared to be selling

1 firearms or transferring firearms over social media.

2 And we have absolutely no information about who
3 these individuals were that Mr. Loyola was engaging with or
4 doing business with over Instagram. And so, to say that any
5 of those firearms would also trigger this enhancement, I
6 think would also be incorrect, and because there is no
7 evidence that gets you to that preponderance standard as it
8 pertains to any of those guns, because we don't know who he
9 was dealing with. We don't know what he knew about who he
10 was dealing with.

11 And we certainly have no idea what any of those
12 individuals were planning to do with any of those guns. And
13 so, to trigger (A)2(i), we can't, because we don't know what
14 Mr. Loyola knew. And we certainly don't have any idea of
15 who those people were.

16 So even if the machine gun counts as one under
17 both prongs of 13(A), that's not enough. And I don't think
18 any other gun at issue in this case, based on the evidence
19 that we have, gets you to that enhancement.

20 I just don't think the evidence is there. And so,
21 that's why we objected to the four-level increase under
22 2K2.1(b)(5).

23 THE COURT: Very good. Thank you.

24 MR. THOMAS: Your Honor, I want to start with the
25 facts we know, and then talk about the law that we've gone

1 through and how it applies to 2K2.1, and then the guideline
2 commentary.

3 The facts are this is the story of someone who is
4 trafficking firearms and ATF figured out about it and we
5 stopped it.

6 The facts show, and if you look at the very
7 beginning of paragraph 12, what starts this investigation is
8 that he's posting online on Instagram pictures of multiple
9 firearms, one of them being a Barrett .50 caliber rifle,
10 another one appears to be a Mac-11 style pistol, we couldn't
11 tell whether it was fully automatic, but it is of that
12 style. It also appeared to have a silencer on it.

13 And so, that's what starts this investigation,
14 because a .50 caliber rifle is one that is highly
15 sought-after by the Mexican drug cartels. And so, when you
16 have young men in the United States who are purchasing them,
17 that is often the case as to where they're going.

18 And so, that was good detective work here. Oh,
19 this looks fishy. Let's look into this. So as the account
20 continued to be followed, the next thing we see is a request
21 for, it's paragraph 13, "I need an M249, and I will cash you
22 out 2k if you can point me in the right direction."

23 At that point what we are seeing is the defendant
24 is posting, "I would like an M249," which is a machine gun,
25 there's also a semiautomatic version, but it's still

1 following this pattern of somebody who's soliciting firearms
2 to go to Mexico, and he's going to give \$2,000 just for
3 someone to hook him up with someone who can get that gun.
4 So a \$2,000 referral fee, that's high.

5 What does that signify? Well, it's signifies that
6 it's what we expect. That it's somebody who's moving guns
7 to Mexico. And so, we respond. He shows an interest. Yes,
8 you know, his people would be interested in a machine gun.
9 So the deal is set up.

10 The text messages back and forth with the
11 undercover agent are that this \$20,000 deal that he's
12 waiting on the money from his people in Mexico. So he's
13 texting that they're sending it from Mexico, sending him the
14 cash. "I got to pick up 10 today, and then it should be 10
15 tomorrow," that's paragraph 16, but it's on the way is what
16 they say.

17 And so, in addition, I think at some point he
18 indicated that, well, maybe can I buy half of it with the
19 10k, and then, you know, you will hold the rest of the gun?

20 And so, he offers to do 10k first and then another
21 10k, but ultimately, we make him wait. We set up the deal.
22 He purchases the machine gun for \$20,000 in cash.

23 And then in the post-arrest interviews, what he
24 explains to us is, and this is in paragraph 19, is that he's
25 been purchasing -- that the individual this gun was supposed

1 to go to is an individual by the name of Adrian who he
2 stated was involved in firearms and narcotics trafficking.

3 He stated he began working and fixing guns for
4 Adrian. His relationship drew closer when Adrian began
5 asking for .50 caliber Barrett rifles. Again, consistent
6 with trafficking to Mexico.

7 Loyola disclosed in 2022 he drove to Waco and
8 purchased a Barrett .50 caliber for Adrian. He acknowledges
9 this is one of the three firearms pictured in that original
10 Instagram post. At the time those were in the possession of
11 Adrian when he took that picture.

12 And he stated that he was aware that Adrian worked
13 for a narcotics cartel. He stated he observed Adrian with
14 10 pounds of marijuana, and Adrian asked if he knew of
15 anyone who would want to purchase the drugs.

16 And so, your Honor, I think that this is a classic
17 firearms trafficking case. If this isn't firearms
18 trafficking, what is? We have an individual who's
19 purchasing guns on behalf of an individual who he knows
20 works for a Mexican cartel.

21 And he's purchasing guns that are of the type that
22 are desired by a drug cartel. And we step in when he's
23 asking to purchase a machine gun. And at that point, we are
24 able to shut him down.

25 And so, if we are talking about, you know, the

1 guidelines say that this enhancement applies if the
2 individual engaged in firearms trafficking.

3 The guidelines don't specifically define this is
4 and this isn't firearms trafficking. They say that this
5 enhancement does apply if this conduct is present, which is
6 the conduct that was described, the two parts under
7 Application Note 13. And the government's position is that
8 Application Note 13 means what it says.

9 (A)(i) is that multiple firearms are involved,
10 multiple firearms are transported, transferred, or otherwise
11 disposed of, as is clearly the case here.

12 And then it has an additional requirement that, at
13 least one of those, it doesn't say at least one, by having
14 "a firearm," it's clear that it doesn't mean two or more.
15 So the first paragraph says two or more; the second one says
16 a. It's a clear distinction.

17 And so, it has this additional requirement. It's
18 not enough that somebody is just moving a lot of guns. It
19 has to be that at least one of them that they knew that it
20 was going to either a prohibited person or that it was going
21 to be disposed of unlawfully.

22 Which here "disposed of unlawfully" includes
23 sending them south to Mexico to a prohibited person,
24 includes a drug dealer, someone who is in the business of
25 dealing drugs.

1 And so, your Honor, I would agree that it is
2 enough that he knew that at least one of them was going to
3 someone who met that second prong. But I would say here the
4 facts show that he knew that multiple guns were including
5 the Barrett .50 caliber rifle.

6 He said he had been selling guns to Adrian for
7 quite some time. And so, your Honor, I think sort of any
8 way you look at it, it clearly meets the definition. If
9 this doesn't, then what is firearms trafficking? So that's
10 the government's position.

11 THE COURT: Yes, very good.

12 I'm going to overrule this objection. I think the
13 facts and the inferences from the facts show that the
14 defendant knew or reasonably should or had a reason to
15 believe is the phrase.

16 I think that the evidence supports this, that he
17 knew or had reason to believe, that Adrian -- that turning
18 these guns over to Adrian, that Adrian was going to
19 unlawfully dispose of the firearms by giving them to the
20 Mexican drug cartel.

21 I think that the Application Note can fairly be
22 read to apply to the single firearm, but I think the facts
23 here support the multiple firearms as well as the
24 inferences.

25 So that being the case, I determine that the total

1 offense level is 32; the Criminal History Category is III;
2 the imprisonment range is between 151 and 188 months; the
3 supervised release range is one to three years; and the fine
4 range is between \$35,000 and \$250,000.

5 Does the government wish to be heard on
6 sentencing?

7 MR. THOMAS: Briefly, your Honor. The only thing
8 I would add, kind of beyond the facts that we've talked
9 about, is that, at the time that the defendant committed
10 this offense, he was under indictment and on a deferred
11 adjudication for the state offense of possession with intent
12 to distribute methamphetamine.

13 And so, I think it just shows the added
14 seriousness of this offense. While he was on deferred
15 adjudication for some other offense, he was continuing, not
16 just to possess firearms but engage in this criminal
17 conduct.

18 And so, your Honor, the government would ask for
19 120 months, which is the guidelines here by way of the
20 statutory cap.

21 THE COURT: Very good.

22 Counsel, I have reviewed your sentencing
23 memorandum. You have also provided to me letters on behalf
24 of your client. With that said, the floor is now yours.

25 MR. RHODES: Thank you, your Honor.

1 As your Honor just stated, we did submit a
2 sentencing memorandum and character letters from
3 Mr. Loyola's mother and two of his sisters. His family is
4 here in the courtroom today. I would ask them to stand and
5 have the Court recognize their presence.

6 THE COURT: Thank you all for being here today.

7 MR. RHODES: As you can see, he has significant
8 family support. I don't want to belabor any of the points I
9 made in my memorandum. I know your Honor has had a chance
10 to read it and review it.

11 I would just like to highlight a few things that I
12 think are worthy of noting that support a downward variance
13 in this case.

14 Mr. Loyola has had an extremely difficult start to
15 his life. As I talk about, he was physically abused by his
16 father. His dad went to federal prison when he was 12. He
17 grew up in a terrible neighborhood surrounded by shootings,
18 drugs.

19 He personally witnessed his mentor,
20 father-figure-like individual be shot, have a guy shoot him
21 right in front of his face and empty the clip of the gun
22 into the guy's back as he was standing right in front of
23 him.

24 His brother was recently murdered. Mr. Loyola has
25 been through some adversity, there's no doubt. He's also

1 struggled with alcohol. He was a heavy drinker prior to his
2 arrest. I think that that can be attributed in large part
3 to a lack of a real father figure growing up, and the
4 struggles and the trauma that he has gone through.

5 He knows that that is a problem. He would ask the
6 Court to recommend him for the RDAP program. So that when
7 he's incarcerated, he can get a handle on that so that he
8 can be able to not ever have any sort of issues with alcohol
9 once he's released.

10 You know, despite all of these disadvantages and
11 the struggles, Mr. Loyola has a plan for the future, and
12 he's excited about it. He wants to get his GED. He was
13 pulled out of school in the 8th grade, and he's basically
14 worked odd jobs ever since to support himself and his
15 family.

16 He wants to create a life that is more stable so
17 that he can stop associating with people that have landed
18 him in this situation.

19 And so, he wants to better himself and get his GED
20 while he's incarcerated. He also wants to obtain a welding
21 license so that he can make an honest living. He, like I
22 said, he wants to better himself.

23 To the extent that he has been able to, while in
24 the Johnson County jail awaiting sentencing in this case, he
25 has actually taken the initiative and completed an anger

1 management program and completed a program called Beyond
2 Prison, Probation and Parole, that's designed specifically
3 to help inmates plan for the future after they're released.
4 So his eyes are set forward on his release and what he plans
5 to do once he's out.

6 I think that, for all of the reasons mentioned in
7 my sentencing memorandum, a downward variance here is
8 appropriate.

9 I think it's worth noting that his criminal
10 history is low compared to the average firearms offender.
11 For the year the data was most recently available, the
12 national average for firearms -- who trafficked or exported
13 firearms was 62 months, and that was in fiscal year 2021.

14 We would submit to the Court that something in
15 that range would be appropriate in this case given his
16 youth, given his traumatic upbringing and given his plans
17 for the future.

18 Additionally, Judge, your Honor, I think it's also
19 worth noting that Mr. Loyola's guidelines here are
20 significantly elevated based in large part on what he told
21 law enforcement and based solely on that.

22 Law enforcement could have tried to investigate
23 Adrian. They could have followed up with the individual
24 that Mr. Loyola was, you know, transferring these firearms
25 to over social media. They didn't.

1 And so, they used his word and solely his word to
2 jack his guideline level up by arguably 15 levels. And so,
3 we could be talking about a significantly different
4 guideline range here today, your Honor, if Mr. Loyola had
5 exercised his right to remain silent.

6 We're not suggesting that he's deserving of a 5K
7 motion from the government or anything like that. I do
8 think from a public policy perspective, it should not be the
9 policy of punishment to be assessed against an individual
10 when they're trying to do the right thing and own up to law
11 enforcement about their involvement in a crime or in a
12 criminal scheme.

13 Here Mr. Loyola was trying to do the right thing.
14 He spoke with law enforcement. We're not here to submit
15 that he was 100 percent honest or totally truthful or that
16 he deserves a 5K, but he did try to do the right thing.

17 And he's being punished far, far more at this
18 point based on where his guideline range is at solely
19 because of what he told law enforcement.

20 And so, I think that that's worth noting here
21 under the 3553(a) factors. And we would ask the Court for a
22 downward variance to reflect what should amount to good
23 public policy to encourage individuals to speak with law
24 enforcement so that law enforcement can further their
25 investigations and try to apprehend people who are more

1 dangerous than the person they are speaking with. That is
2 the nature of the criminal investigations.

3 I think Mr. Loyola should -- his statements to law
4 enforcement should be viewed as mitigating, rather than
5 aggravating, like they currently are under the guidelines.
6 I think here, for all of these reasons, a downward variance
7 is appropriate. That's what we would ask for today.

8 Mr. Loyola is simply a young man who got involved
9 with the wrong crowd. He has made some bad decisions in his
10 life. He knows that. He recognizes that, but he is ready
11 to turn over a new leaf.

12 And once he is released, he plans to make an
13 honest living to support himself and his young son who he
14 loves very much, and he is involved with on almost a daily
15 basis. This is a story of a man that got involved with the
16 wrong crowd and got wrapped up into something that is far
17 bigger than himself.

18 He has his entire life ahead of him. He has a
19 family. He has a very supportive family that is here today
20 in court. He has no intention of going back to a criminal
21 lifestyle.

22 So, your Honor, I think for all of these reasons,
23 the reasons that I put in my sentencing memorandum, and any
24 other reason the Court sees appropriate, I think a downward
25 variance is called for in this case, and that's what we

1 would ask for.

2 THE COURT: Thank you.

3 Sir, do you wish to speak on your behalf?

4 THE DEFENDANT: Yes, sir. First and foremost, I
5 would like to acknowledge my appreciation to the Court for
6 giving me this opportunity to speak. Thank you.

7 Of course, I accept full responsibility, as well
8 as my consequences of my actions. On October 26, 2022, not
9 only was I arrested, but I was saved from the life that I
10 was living. Throughout these five months of my
11 incarceration, I started a little process, and I'm ready to
12 go mentally.

13 I do plan to take the rest of my time to educate
14 myself in every way possible so that on my release I can
15 become productive citizen.

16 I would like to apologize to my four-year-old son,
17 Leonel. At a very young age I too lost my father to the
18 federal system and deportation, 10 long years without a
19 father being there.

20 I do not blame any of these things for my
21 mistakes. I only want to make it home to my son in time so
22 that I can be the father he deserves.

23 As far as my family circle, I really apologize to
24 my woman. I would like to apologize as well to my mother.
25 I would like to come back as soon as possible to be a

1 supportive son myself and a good brother to my sisters.

2 I extend my apologies to my community and to the
3 Court before which I stand today. Verbally, I say my
4 mistakes will be fixed, and I will leave the negative
5 impacts in the past.

6 I am a very young man, but I have no doubt in my
7 mind that this chapter in my life will give me the tools and
8 the resources to become a good person.

9 I look forward to a positive future and living an
10 honest life and also to raise back up and raise my family.
11 God bless and thank you, your Honor.

12 THE COURT: Thank you.

13 I will now state the sentence determined pursuant
14 to Title 18, U.S.C. Section 3553. It is the judgment of the
15 Court that the defendant is committed to the Federal Bureau
16 of Prisons for a period of 120 months.

17 I do not order a fine.

18 I do order the mandatory special assessment of
19 \$100.

20 I order that, upon your release, you be placed on
21 supervised release for a term of three years. While on
22 release, you shall comply with the terms of supervision set
23 forth in Miscellaneous Order No. 64, and as outlined in Part
24 G of the presentence report.

25 Is there any objection from the government to this

1 sentence?

2 MR. THOMAS: No, your Honor.

3 THE COURT: From the defendant?

4 MR. RHODES: No legal objection, your Honor. With
5 the understanding that our objection to the PSR is still on
6 the record.

7 THE COURT: Yes.

8 MR. RHODES: We would ask for local placement,
9 your Honor, as close to Fort Worth as possible so that he
10 can be near his son and family.

11 THE COURT: Yes. And I will recommend the RDAP
12 program to the extent he is eligible.

13 I will impose this sentence as stated.

14 You have the right to appeal. You also have the
15 right to apply for leave to appeal in forma pauperis, if you
16 are unable to pay the cost of an appeal.

17 And if you decide to appeal, your notice must be
18 filed within 14 days. Please instruct your counsel on how
19 you wish to proceed in that regard.

20 Please follow your client's instructions on that
21 issue.

22 Anything else from the government?

23 MR. THOMAS: No, your Honor.

24 THE COURT: Then we are in recess on this case.

25 Thank you both for being here.

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Good luck to you, sir.

(The proceedings concluded at 10:33 a.m.)

REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 31st day of May, 2023.

_____/s/ Zoie Williams_____
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